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SEP 18 2006
OFFICE OF PETITIONS

In re Application of
John D. Lundberg et al.
Application No. 10/782,428
Filed: February 18, 2004
Title of Invention: **ROTARY ENGRAVING
APPARATUS**

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: DECISION ON PETITION
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This is a decision on the petition filed March 13, 2006, claiming non-receipt which is treated under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513. The petition is also filed in the alternative under 37 CFR 1.137(b)¹ to revive the above-identified application.

The petition under 37 CFR 1.181 is **DISMISSED**.
The petition under 37 CFR 1.137(b) is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181" or, "Renewed Petition under 37 CFR 1.137(b)". This is not a final agency decision.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

This application became abandoned September 7, 2005, for failure to file a timely response to the Final Office Action mailed June 6, 2005 which set a three month period for reply. Accordingly a Notice of Abandonment was mailed December 29, 2005.

Petitioner argues that the Office Action was not received however, in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement that the Office communication was not received and attesting to the fact that a search of the docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in petitioner's statement.²

The evidence identified above is required to show that the petitioner arguing non-receipt is without fault in not receiving the communication. In this instance no docket records have been provided and, a review of the record reveals that the address of record is different from that found in the petition which raises the question as to when the correspondence address was changed and whether the non-receipt of the office action could be attributed to a change in address which was not communicated to the USPTO. Petitioner should provide evidence to show what the correct address was at the time the Final Office Action was mailed to refute any appearance that petitioner was with fault in not receiving the communication.

Under 37 CFR 1.137(b), the unintentional delay standard, the instant petition does not satisfy requirement (1) above.

The application became abandoned for failure to file a response within the meaning of 37 CFR 1.113 to the final rejection of June 6, 2005, within the time period for response. No response has been submitted with the petition to revive.

The only proper reply to a final Office action is an amendment placing the application in *prima facie* condition for allowance, a Notice of Appeal accompanied by the requisite fee, a Request for Continued Examination (RCE) accompanied by a proper submission, or a continuing application.

Petitioner must submit a proper reply to the final Office action mailed on June 6, 2005, with any renewed petition. **Petitioner should note that submission of any renewed petition without the required reply will be construed as intentional delay.**

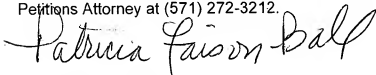
²M.P.E.P. § 711.03(c): See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

By FAX: (571) 273-8300
 ATTN: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned
Petitions Attorney at (571) 272-3212.

A handwritten signature in cursive script, reading "Patricia Faison-Ball". The signature is written in dark ink and is positioned above the printed name and title.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions